

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability company,)	CASE NO. 3:17-cv-05760-BHS
)	
Plaintiff,)	RENEWED EMERGENCY MOTION FOR
)	TEMPORARY RESTRAINING ORDER
vs.)	AND PRELIMINARY INJUNCTION AND
)	CONSOLIDATED MEMORANDUM IN
KEVIN SYKES-BONNETT and SYKED ECU TUNING INCORPORATED, a Washington corporation, and JOHN MARTINSON,)	SUPPORT
)	
)	NOTE ON MOTION CALENDAR :
)	AUGUST 16, 2018
)	
Defendants.)	<u>ORAL ARGUMENT REQUESTED</u>

Plaintiffs HP TUNERS, LLC, a Nevada limited liability company (“HPT”), brings this Renewed Emergency Motion for Temporary Restraining Order and Preliminary Injunction pursuant to Federal Rules of Civil Procedure 65(b) against Defendants KEVIN SYKES-BONNETT, SYKED ECU TUNING INCORPORATED and JOHN MARTINSON, including those persons acting in concert with them (collectively, “Defendants”). In support thereof, HPT states as follows:

INTRODUCTION

On October 18, 2017, this Court denied HPT’s initial motion for Temporary Restraining Order based on the lack of information and evidence HPT was able to proffer at that time. Since

1 that time, the parties have engaged in discovery; however, Defendants have not been
 2 forthcoming with discovery and have not produced virtually any of the specific documents and
 3 information requested by HPT. HPT finally knows why. Specifically, several days ago, an
 4 anonymous informant¹ provided HPT with detailed and comprehensive evidence demonstrating
 5 Defendants' possession of substantial confidential and proprietary information of HPT that was
 6 wrongfully furnished to Defendants by a former owner of HPT.
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9 ¹ In the interest of full disclosure, and mindful of its duty of candor to the Court, HPT
 10 discloses to the parties and the Court the manner in which it received the information from the
 11 anonymous informant detailed herein and in the Declaration of Keith Prociuk submitted in
 12 connection with this Motion. In connection with HPT's investigation concerning the
 13 misappropriation and misuse of its confidential and proprietary information, which investigation
 14 remains ongoing, counsel for HPT was contacted anonymously, by electronic mail, by an
 15 individual claiming to have material and highly relevant information relating to HPT's
 16 investigation, and the misuse and misappropriation of HPT's confidential and proprietary
 17 information. Preliminary communications between Counsel and the anonymous informant
 18 (which communications have been produced to Defendants herein) and preliminary evidence
 19 provided by the anonymous informant led HPT to believe that such information existed, was
 20 highly credible and was, in fact, possessed by the anonymous informant. Consequently,
 21 additional electronic mail communications ensued. Ultimately, the anonymous informant agreed
 22 to provide HPT with evidence and information in exchange for a reward. However, with regard
 23 to the turnover of evidence and information in its possession, the anonymous informant required
 24 that his or her identity remain anonymous and that HPT would tender a reward in the form of
 25 crypto-currency (Bitcoin) in exchange for the information and evidence. Based on the
 preliminarily detail supplied by the anonymous informant giving strong weight to the credibility
 of the information and evidence, HPT proceeded with a series of transactions in which HPT
 tendered a reward to the anonymous informant in exchange for information and evidence relating
 to the misappropriation and misuse of HPT's confidential and proprietary information. In
 connection with such transactions, among other documents and information which have been
 produced to Defendants, HPT received Exhibits 1-A, 1-B, 1-C and 1-L to the Declaration of
 Keith Prociuk submitted in connection with this Motion. HPT has used its best efforts to
 authenticate the documents and images received from the anonymous informant and believes
 them to be authentic. HPT does not know the identity of the anonymous informant nor does it
 have knowledge as to how the evidence was obtained except that the anonymous informant has
 communicated that such documents, information and images were provided by Defendant Kevin
 Sykes-Bonnett and/or were captured in the context of TeamViewer sessions between Mr. Sykes-
 Bonnett and a third party (not the anonymous informant).

1 The evidence from the anonymous informant includes screenshots, images and certain
2 documents and communications showing the former HPT owner's involvement with Syked and
3 Defendants' wrongful possession of highly confidential and proprietary information of HPT. For
4 example, the images reflect Defendants' unauthorized possession of HPT's key generation tool
5 and certain source code; however, the tool and source code were only known to and possessed by
6 the three owners of HPT. This evidence coupled with the statements of Matt Kaiser wherein he
7 details the sale of fraudulent HPT application keys by Kevin Sykes-Bonnett to third parties using
8 a HPT key generation tool is consistent with the information provided by the anonymous
9 informant.
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11 The fact that Defendants are unquestionably in wrongful possession of HPT's highly
12 confidential and proprietary information taken together with Defendants' prior public threats on
13 FaceBook to "open source" (meaning publicly release) all GM source code and Defendants'
14 active marketing, distribution and sale of competitive products, which are based on, derived from
15 and/or incorporate HPT's confidential and proprietary information gives rise to this renewed
16 motion for Temporary Restraining Order and Preliminary Injunction. Absent injunctive relief,
17 HPT will suffer irreparable harm and the imminent threat to HPT's entire business is substantial.
18

19 HPT seeks to restrain and enjoin Defendants as follows:

20 1. That Defendants, as well as each of their agents, and all persons acting in concert
21 with any of them, be immediately restrained from, directly or indirectly, publicly releasing
22 source code (open sourcing code) in any manner;

23 2. That Defendants, as well as each of their agents, and all persons acting in concert
24 with any of them, be immediately restrained from, directly or indirectly, selling any competitive
25 products or software to HPT;

1 3. That Defendants, as well as each of their agents, and all persons acting in concert
2 with any of them, be immediately restrained from, directly or indirectly, selling Syked ECU
3 Tuning, Inc.'s vehicle communication cable known as the "Syked Eliminator Cable";

4 4. That Defendants, as well as each of their agents, and all persons acting in concert
5 with any of them, be immediately restrained from, directly or indirectly, releasing any products
6 or services using HPT's proprietary code to any third party;

7 5. That Defendants, as well as each of their agents, and all persons acting in concert
8 with any of them, be immediately restrained from, directly or indirectly, selling any products or
9 services using HPT's proprietary code to any third party;

10 6. That Defendants, as well as each of their agents, and all persons acting in concert
11 with any of them, be immediately restrained from, directly or indirectly, releasing any products
12 or software that is based on or derived from HPT's software or products;

13 7. That Defendants, as well as each of their agents, and all persons acting in concert
14 with any of them, be immediately restrained from, directly or indirectly, selling any products or
15 software that is based on or derived from HPT's software or products;

16 8. That Defendants, as well as each of their agents, and all persons acting in concert
17 with any of them, be immediately restrained from, directly or indirectly, accessing any computer
18 folders or files provided to Defendants by Ken Cannata or Bobbie Cannata;

19 9. That Defendants, as well as each of their agents, and all persons acting in concert
20 with any of them, be ordered to provide HPT with any and all communications, documents and
21 information received from Ken Cannata or Bobbie Cannata;

22 10. That Defendants, as well as each of their agents, and all persons acting in concert
23 with any of them, be immediately restrained from, directly or indirectly, engaging in any
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1 activities related to the planning, design, development, coding or creation of any software or
2 products that in any way uses, relies upon, is based on or discloses any of HPT's confidential,
3 proprietary or trade secret information, including but not limited to source code;

4 11. That Defendants be required to submit any and all computers and portable USB
5 storage devices and drives used by them at any time since January 1, 2016 for forensic
6 examination by an expert designated by Plaintiff and shall be restrained from changing, deleting,
7 modifying or otherwise tampering with any contents of any such computer or portable USB
8 storage device or drive;

9 12. That Defendants be required to tender the contents of any and all computer files
10 and folders which are reflected on the screenshot images attached as Exhibits 1-A, 1-B and 1-C
11 to the Declaration of Keith Prociuk;

12 13. That Defendants be required to tender the PCM Harness for the E38 Controller
13 depicted in Exhibit 1-I to the Declaration of Keith Prociuk for forensic examination by an expert
14 designated by Plaintiff and shall be restrained from changing, deleting, modifying or otherwise
15 tampering with the PCM Harness for the E38 Controlled in any manner whatsoever;

16 14. That Defendants be ordered to compel with discovery and produce the documents
17 and information requested by HPT; and

18 15. That this Court enter such other and further relief relating to the Scheduling Order
19 and any other matters as deemed necessary and appropriate.

20 HPT requests that the Court expedite consideration of this Motion to avoid irreparable
21 harm to HPT.

22 The relief requested is a temporary restraining order, issued temporarily until such time
23 as the Court may hear HPT's Motion for Preliminary Injunction. HPT also requests that the
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1 Court issue an order to show cause as to why the requested preliminary injunction should not
2 issue.

3 While discussed in more detail in the Memorandum of Points and Authorities that
4 follows, the legal authority in support of the requested relief is Fed. R. Civ. P. 65(b) and Local
5 Rule 65. The Motion is based on the Verified Amended Complaint which was filed as well as
6 the Declaration of Keith Prociuk attached as Exhibit 1, and such oral argument as the Court may
7 allow.
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9 **STATEMENT OF RELEVANT FACTS**

10 1. HPT is a niche business, which provides complete, cost effective automotive
11 tuning and data acquisition solutions for enthusiasts and professional shops.

12 2. HPT's business includes but is not limited to computer hardware and software
13 designed for use in custom and/or pre-programmed engine and transmission tuning and
14 calibration applications for automobiles, trucks and other types of vehicles (including but not
15 limited to ATV's, snowmobiles and watercraft) (the "HP Tuners Business").

16 3. HPT has expended significant time, money and resources to develop the HP
17 Tuners Business, and HPT has created methods of business, strategies, programs and
18 technologies which did not exist in the industry prior to HPT's development of the HP Tuners
19 Business.
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21 4. HPT conducts business nationwide. Over the years, HPT has invested a
22 great deal of time and money in developing its proprietary products and source code,
23 and in building and growing the HP Tuners Business.

24 5. In order for HPT to gain a competitive advantage in the industry, it has cultivated,
25 nurtured and maintained an extensive network of vendors, resellers and customers to which

1 HPT provides its products and offerings. HPT's network of vendors, resellers and
2 customers is expansive and relies on HPT to ensure that only authorized, authentic products
3 and offerings are available in the marketplace.

4 6. HPT invests a substantial amount of money and other resources in developing and
5 maintaining its network of vendors, reseller and customers.

6 7. HPT prides itself in catering to the needs of its vendors, resellers and
7 customers and providing authorized, authentic and functional products and offerings, and
8 the most competitive pricing in the industry.

9 8. HPT works diligently to create new products and offerings and to quickly
10 and adeptly match its vendors, resellers and customers' needs and requests.

11 9. HPT is constantly working to develop its products, source code and offerings, and
12 has devoted substantial time, money and resources to protect its confidential and proprietary
13 information, and to avoid efforts by third parties to pirate HPT's products and offerings.

14 10. As a result of HPT's reputation, exceptional service, and diligent development
15 of products and offerings, HPT has developed long-standing relationships with many of its
16 vendors, resellers and customers.

17 11. HPT's confidential and proprietary software, source code, license key
18 generator and offerings have been developed and extensively refined by HPT at a
19 substantial cost and effort and constitute confidential information and valuable trade
20 secrets of HPT (collectively, the "Confidential Information").

21 12. HPT derives economic value from the fact that its Confidential Information
22 is not known outside of HPT's business and is not available through any public records and
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1 information sources. HPT's Confidential Information cannot be independently developed by
2 its competitors without great effort and expense.

3 13. Recognizing the economic value that it derives from its Confidential
4 Information, as well as the potential value of this information to its competitors, HPT
5 requires that its Confidential Information be kept strictly confidential by its employees and
6 restricts access to this information. HPT has taken substantial steps and security measures to
7 protect the confidentiality of its Confidential Information, including but not limited to the
8 following:
9

- 10 a) HPT protects access to its Confidential Information through
11 computer passwords;
- 12 b) HPT protects to its Confidential Information through hard drive
13 encryption on all employee's computers;
- 14 c) HPT protects access to its Confidential Information through
15 sophisticated firewalls;
- 16 d) HPT protects distribution of Confidential Information through non-
17 compete and non-disclosure agreements;
- 18 e) HPT limits the number of employees having access to its
19 Confidential Information;
- 20 f) Employees are given access to HPT's Confidential
21 Information on a "need to know" basis;
- 22 g) HPT does not give access to its Confidential Information
23 to non-employees;
- 24 h) HPT employees are forbidden from copying, transferring or
25 otherwise duplicating any of HPT's Confidential Information; and

1 i) HPT requires each employee to return to HPT all Confidential
2 Information when the employee leaves HPT's employ.

3 14. Furthermore, HPT undertook reasonable measures to maintain the secrecy of its
4 proprietary products, source code, software and offerings, including but not limited to entering
5 into licensing agreements with protective clauses and installing security measures to prevent
6 others from obtaining access and pirating HPT's confidential and proprietary products, source
7 code, software and offerings.

8 15. Prior to October 20, 2016, HPT was owned by Keith Prociuk, Chris Piasri and
9 Ken Cannata. (See Prociuk Decl.).

10 16. On October 20, 2016, HPT purchased Mr. Cannata's interest in the company. In
11 connection with that agreement, Mr. Cannata agreed to various restrictive covenants, he agreed
12 to return all of HPT's proprietary and confidential information (including but not limited to all
13 MPVI firmware and source code) and he agreed to destroy all confidential and proprietary
14 information of HPT. (See Prociuk Decl.).

15 17. Further, while Mr. Cannata was an owner of HPT and in connection with the
16 purchase of his interest, he agreed to maintain the confidentiality of and not disclose HPT's
17 confidential and proprietary information in any manner. (See Prociuk Decl.).

18 18. Notwithstanding these restrictions, several days ago, an anonymous informant
19 provided HPT with detailed information and images received from Defendant Kevin Sykes-
20 Bonnett and from TeamViewer sessions with Defendant Kevin Sykes-Bonnett. The information
21 shows that Mr. Cannata (and/or his wife Bobbie Cannata) was involved with Defendants as an
22 owner as of at least January 2017 (less than 3 months after the purchase of his interest) and that
23 owner as of at least January 2017 (less than 3 months after the purchase of his interest) and that
24 owner as of at least January 2017 (less than 3 months after the purchase of his interest) and that
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1 Defendant Kevin Sykes-Bonnett wrongfully possesses highly confidential and proprietary
 2 information of HPT. (See Prociuk Decl.).

3 19. For example, the screenshot of Defendants' computer known as "Kevin-PC"
 4 (which is attached as Exhibit 1-A to the Prociuk Decl.) depicts a number of HPT source code
 5 files, descriptive documents and folders including:

- 6 a. "Firmware" – Folder
- 7 b. "Firmware Hack" - Folder
- 8 c. "CAN0RX_ISR.ASM" - Firmware source code file from HPT MPVI that only
 9 Mr. Prociuk, Mr. Cannata and Mr. Piasri had access to
- 10 d. "CAN0TXPROCESS.ASM" - Firmware source code file from HPT MPVI that
 11 only Mr. Prociuk, Mr. Cannata and Mr. Piasri had access to
- 12 e. "P32_ALGO.ASM" - Firmware source code file from HPT MPVI that only Mr.
 13 Prociuk, Mr. Cannata and Mr. Piasri had access to
- 14 f. "FirmwareHack.rar" - Archive file
- 15 g. "Interface Reprogramming.doc" - HPT document describing MPVI firmware
 16 reprogramming commands and method
- 17 h. "MPVI Protocol.doc"- HPT document describing MPVI protocol commands used
 18 to command and control the MPVI from PC
- 19
- 20

21 20. Similarly, the screenshot of Defendants' computer known as "Kevin-PC" (which
 22 is attached as Exhibit 1-B to the Prociuk Decl.) depicts a number of HPT folders and files from
 23 HPT VCM Suite source code including:

- 24 a. "License" - HPT source code folder containing core VCM Suite licensing code)
- 25

- b. "LicTransfer" - Folder containing HPT utility program source code used to transfer licenses from one MPVI to another, used for interface replacements
- c. "Shared" - Folder containing VCM Suite source code
- d. "cCable.cs" - HPT VCM Suite source code file
- e. "cController.cs" - HPT VCM Suite source code file
- f. "cMPVI.cs" - HPT VCM Suite source code file
- g. "cUtil.cs" - HPT VCM Suite source code file
- h. "cVehicle.cs" - HPT VCM Suite source code file
- i. "License Writer.exe" - HPT utility program used to transfer licenses from one MPVI to another
- j. "Lictransfer.exe" - HPT utility program used to transfer licenses from one MPVI to another - older version

21. Furthermore, the screenshots of Defendants' computer known as "Kevin-PC" (which is attached as Group Exhibit 1-C to the Prociuk Decl.) depicts a HPT windows based Key Generator program which acts as a shell to a HPT keygen.exe command line program. The keygen.exe is confidential and proprietary information HPT.

22. Defendants' receipt and possession of this detailed confidential and proprietary information of HPT is wrongful and improper.

23. Notably, Matt Kaiser's statements are consistent with Defendants' possession of this information. (A copy of the Declaration of Matt Kaiser is attached to the Prociuk Decl. as Exhibit 1-H).

24. In particular, Mr. Kaiser stated that Kevin Sykes-Bonnett was generating fraudulent application keys for an HPT Interface. Moreover, Mr. Kaiser stated that Kevin Sykes-

1 Bonnett had a “silent business partner” who was a “former HP Tuners partner or employee.”
2 (See the Kaiser Decl. which is attached as Exhibit 1-H to the Prociuk Decl.).

3 25. In addition to the above, Defendants posted a YouTube video at
4 <https://youtu.be/nGK4o0lxYq0?t=100> which contained a licensing screen. A screenshot of the
5 licensing screen shows Defendants have copied HPT’s licensing screen virtually word for word.
6 (See Exhibit 1-D). HPT now knows how Defendants were able to copy this – it was wrongfully
7 provided to Defendants by Mr. Cannata. (See Prociuk Decl.).

8 26. Similarly, Exhibit 1-E shows a listing of exact HPT parameter names (character
9 per character, including abbreviations) showcased in Defendants’ own software. Every single
10 parameter in the list to the left is copied from HPT software. (See Exhibit 1-F to the Prociuk
11 Decl. showing a sample of a few of these parameters shown in HPT software (e.g. “Max Torque
12 Timing Mult”, “Max Torque Timing EGR adder”, and “Max Torque Timing Alcohol Adder”)
13 which are seen in Defendants’ software. This is also consistent with Defendants’ receipt of the
14 parameters list names from Mr. Cannata as Mr. Prociuk came up with these names himself over a
15 decade ago and there is no other way that Defendants would have them. (See Prociuk Decl.).

16 27. Defendant Kevin Sykes-Bonnett has also posted images on FaceBook showing his
17 wrongful possession of confidential and proprietary information of HPT.
18

19 28. For example, Defendant Sykes-Bonnett posted an image showing his possession
20 of a PCM Harness for the E38 Controller, which PCM Harness was designed by Mr. Prociuk, is
21 proprietary to HPT, is manufactured exclusively for HPT by Speartech, and which is not publicly
22 available. (See Exhibit 1-I to the Prociuk Decl.). Mr. Cannata would have been in possession of
23 the PCM Harness and only Mr. Cannata could have provided the PCM Harness to Defendants.
24
25

29. Similarly, Defendant Sykes-Bonnett posted an image showing his possession of PCM Tools Software, which is confidential and proprietary software of HPT, and which was not possessed by anyone other than Mr. Prociuk, Mr. Piastrri and Mr. Cannata. (See Exhibit 1-J to the Prociuk Decl.). Mr. Cannata would have been in possession of the PCM Tools Software and only Mr. Cannata could have provided the PCM Tools Software to Defendants.

30. Furthermore, upon information and belief, Syked's recently released Eliminator Cable is the same or substantially similar to HPT's MPVI and contains the same communication protocol. Documents and information received from the anonymous informant demonstrate that Defendants have duplicated HPT's MPVI communication protocol in connection with the recently released Syked Eliminator Cable, and that the Syked Eliminator Cable incorporates confidential and proprietary information of HPT's MPVI. (See Prociuk Decl.).

31. Defendant Kevin Sykes-Bonnett has made various public threats to "open source" (publicly release) source code. (See Exhibit 1-G to the Prociuk Decl.).²

32. Moreover, Defendants are actively marketing products for sale (e.g. Syked's software, the Syked's Eliminator Cable, tuning credits, etc.) which unfairly compete with HPT's products and offerings, and which are based on, derived from and/or incorporate confidential and proprietary information of HPT. (See Prociuk Decl. and Exhibit 1-K attached thereto, which is a FaceBook post by Syked marketing the competing Eliminator Cable product and discounted tuning credits available for sale to compete with HPT).

33. Attached as Exhibit 1-L to the Prociuk Decl. is an unsigned copy of a "Shares Purchase Agreement" between Syked ECU Tuning, Inc. and Bobbie Cannata. The anonymous

² Defendants' threats in this regard should be taken seriously. On May 23, 2018, Defendant Kevin Sykes-Bonnett publicly released proprietary algorithms of General Motors in a FaceBook post. (See Exhibit 1-M to the Prociuk Decl.).

1 informant provided HPT with this document evidencing Mr. Cannata's direct or indirect
 2 ownership interest in Syked ECU Tuning, Inc. through Bobbie Cannata. The "Shares Purchase
 3 Agreement" is substantially similar to a form of the same document used by Ken Cannata and
 4 HPT during Ken Cannata's tenure with HPT. In addition, the anonymous informant provided
 5 email communications between Ken Cannata and Syked ECU Tuning, Inc. relating to the Bylaws
 6 of Syked ECU Tuning.

7
 8 34. Because of the threat to HPT's business that competing products incorporating
 9 HPT's confidential and proprietary information have been released and are being sold, HPT's
 10 entire business is at stake.

11 35. Consequently, there is now substantial evidence demonstrating Defendants'
 12 wrongful receipt, possession and use of HPT's confidential, proprietary and trade secret
 13 information.

14 36. For these reasons, Plaintiff's renewed motion should be granted and the injunctive
 15 relief requested herein should be entered.

16 **ARGUMENT**

17 **THE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY** 18 **INJUNCTION SHOULD BE GRANTED.**

19 **A. LEGAL STANDARDS**

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 21 A court has the discretion to grant injunctive relief when a plaintiff establishes that it is
 22 likely to succeed on the merits, it is likely to suffer irreparable harm in the absence of the
 23 preliminary relief, the balance of equities tips in his favor, and an injunction is in the public
 24 interest. *All. For The Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011), *quoting*
 25

1 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Johnson v. Couturier*, 572 F.3d
 2 1067, 1078 (9th Cir. 2009), also quoting *Winter*.

3 Alternatively, the Ninth Circuit has authorized a sliding scale approach where, even if the
 4 plaintiff has not established that it is likely to succeed on the merits, a court may nevertheless
 5 grant the requested relief if the plaintiff raises “serious questions going to the merits ... and the
 6 balance of hardships tips sharply in [plaintiff’s] favor.” *Cottrell*, 632 F.3d at 1131-32, *quoting*
 7 *Clear Channel Outdoor, Inc. v. City of L.A.*, 340 F.3d 810, 813 (9th Cir. 2003).

8
 9 If a defendant claims to have an affirmative defense, once the plaintiff establishes
 10 likelihood of success on the merits, it is the defendant’s burden to show it is likely to succeed on
 11 its affirmative defense. *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1158 (9th Cir.
 12 2007).

13 **B. HPT IS LIKELY TO SUCCEED ON THE MERITS, HPT IS LIKELY TO**
 14 **SUFFER IRREPARABLE HARM IN THE ABSENCE OF THE**
 15 **REQUESTED RELIEF AND THERE IS NO PREJUDICE TO**
 16 **DEFENDANTS IN GRANTING THE RELIEF REQUESTED HEREIN.**

17 The evidence presented in connection with the Verified Amended Complaint and this
 18 Motion establishes that HPT is likely to succeed on the merits of its claims.

19 As detailed herein and in the Declaration of Keith Prociuk, Defendants have been
 20 wrongfully provided with and possess HPT’s confidential and proprietary information and have
 21 misappropriated HPT’s confidential and proprietary information by incorporating it into the
 22 products and software it is developing, actively marketing and selling. Moreover, Defendants
 23 are generating fraudulent application keys for HPT Interfaces using HPT’s proprietary key
 24 generation tool. Moreover, there is exact duplication of HPT parameter names (character per
 25

1 character, including abbreviations) showcased in Defendants' own software. As the exhibits to
 2 the Amended Complaint demonstrate, Defendants have copied HPT's licensing and have
 3 publicly admitted to hacking and reversing HPT's software for their own benefit.

4 In connection with the prior motion, this Court found that HPT had not proffered
 5 sufficient evidence in support of the request for injunctive relief. Now, based on the images and
 6 information provided as well as the fact that HPT's former owner has supplied HPT's
 7 confidential and proprietary information to his new "business partners", it is highly likely that
 8 Defendants' products and software are derived from, based upon and contain HPT's proprietary
 9 code and information. Without HPT's proprietary code and information, Defendants would not
 10 have been able to launch a competitive product. For example, Defendants have created a
 11 duplicate MPVI protocol for their new Syked Eliminator Cable which is being sold right now.
 12 Defendants' based the development of the Syked Eliminator Cable on the information received
 13 from Mr. Cannata. Furthermore, the similarities outlined herein and identical parameters serve
 14 to demonstrate that Defendants' products and software are based on HPT's code and proprietary
 15 information.
 16

17 For these reasons, HPT's claims for (i) violation of the Computer Fraud and Abuse Act
 18 ("CFAA") arising under 18 U.S.C. §1030; (ii) violation of the Defend Trade Secrets Act
 19 ("DTSA"), 18 U.S.C. §1836 et seq.; (iii) misappropriation of trade secrets arising under the
 20 Washington Uniform Trade Secrets Act, RCW 19.108; (iv) violation of the Illinois Trade Secrets
 21 Act, 765 ILCS 1065/1 et. seq.; (v) unfair competition under the Washington Consumer
 22 Protection Act, RCW 19.86.020; (vi) unfair competition under the Illinois Consumer Fraud and
 23 Deceptive Business Practices Act, 815 ILCS 505/1 et. seq.; (vii) breach of contract; and (viii)
 24 tortious interference with prospective economic relations, are all well founded in law and fact.
 25

1 Here, there is no harm to Defendants by virtue of the relief requested herein and that HPT
2 will suffer irreparable harm if Defendants' conduct is not restrained. It is indisputable that the
3 release or sale of competitive products and software containing misappropriated confidential,
4 proprietary and trade secret information of HPT is improper and unlawful. HPT's investigation
5 of these matters based on publicly available information and strong evidence from an anonymous
6 informant who was communicating with Mr. Sykes-Bonnett and from TeamViewer sessions with
7 Mr. Sykes-Bonnett which are gives rise to and support HPT's conclusion that Defendants'
8 products and software are based on, derived from and contain HPT's confidential, proprietary
9 and trade secret information.
10

11 Because Defendants' products and software are based on, derived from and contain
12 HPT's confidential, proprietary and trade secret information, HPT will suffer irreparable harm in
13 the absence of the requested relief. If Defendants are permitted to containing selling their
14 products and software which are based on, derived from and contain HPT's confidential,
15 proprietary and trade secret information, then HPT's entire business is at risk. The very survival
16 of HPT is at stake if Defendants are not enjoined from their conduct.
17

18 Moreover, it is indisputable that Defendants will not suffer any harm in having to cease
19 their sale of products and software to the public. Defendants release and sale of their
20 competitive products should not be permitted unless and until Defendants can demonstrate that
21 their products and software are not based on or derived from, and do not contain HPT's
22 confidential, proprietary and trade secret information. The losses to HPT if Defendants'
23 software and product is publicly released cannot be ascertained and are unknown. It is difficult
24 to imagine harm that could be more irreparable as HPT's entire business is in jeopardy.
25

Furthermore, it is not only HPT that will suffer irreparable harm, harm will also be inflicted upon all of its employees, who will be substantially impacted if HPT's business is compromised. There can be no doubt that HPT has demonstrated a high likelihood of very serious and irreparable harm.

C. THE BALANCE OF EQUITIES TIPS SHARPLY IN HPT'S FAVOR AND THE REQUESTED RELIEF IS IN THE PUBLIC INTEREST.

If Defendants, and those acting in concert with them, are enjoined as requested, they will only be prevented from (unlawfully) continuing to use confidential and information of HPT which is not theirs and from selling products and software which is based on, derived from and contains HPT's confidential, proprietary and trade secret information. Conversely, if HPT's products and software have been misappropriated by Defendants which HPT has strong evidence to suggest is the case, HPT stands to lose its entire business if the relief is not granted and Defendants, and those acting in concert with him, are not enjoined as detailed herein.

Finally, HPT has not unreasonably delayed in filing this motion. (*See Cybermedia, Inc. v. Symantec Corp.*, 19 F. Supp. 2d 1070, 1078 (N.D. Cal. 1998) (three month delay to investigate not an unreasonable delay)). HPT received the information from the anonymous source earlier this month on August 5, 2018 and immediately took action to prepare and file this Motion. Accordingly, the balance of equities tips strongly in HPT's favor. Finally, the potential devastation of HPT's business and loss of jobs implicate a strong interest by the public in granting the requested relief.

D. CONCLUSION

Because the factors weigh in favor of granting the relief requested by HPT, HPT respectfully requests that the Court enter the proposed order attached hereto as Exhibit 2.

1 WHEREFORE, HP TUNERS, LLC, respectfully prays for the following relief against
2 Defendants Kevin Sykes-Bonnett, Syked ECU Tuning, Inc. and John Martinson:

3 1. That Defendants, as well as each of their agents, and all persons acting in concert
4 with any of them, be immediately restrained from, directly or indirectly, publicly releasing
5 source code (open sourcing code) in any manner;

6 2. That Defendants, as well as each of their agents, and all persons acting in concert
7 with any of them, be immediately restrained from, directly or indirectly, selling any competitive
8 products or software to HPT;

9 3. That Defendants, as well as each of their agents, and all persons acting in concert
10 with any of them, be immediately restrained from, directly or indirectly, selling Syked ECU
11 Tuning, Inc.'s Eliminator Cable;

12 4. That Defendants, as well as each of their agents, and all persons acting in concert
13 with any of them, be immediately restrained from, directly or indirectly, releasing any products
14 or services using HPT's proprietary code to any third party;

15 5. That Defendants, as well as each of their agents, and all persons acting in concert
16 with any of them, be immediately restrained from, directly or indirectly, selling any products or
17 services using HPT's proprietary code to any third party;

18 6. That Defendants, as well as each of their agents, and all persons acting in concert
19 with any of them, be immediately restrained from, directly or indirectly, releasing any products
20 or software that is based on or derived from HPT's software or products;

21 7. That Defendants, as well as each of their agents, and all persons acting in concert
22 with any of them, be immediately restrained from, directly or indirectly, selling any products or
23 software that is based on or derived from HPT's software or products;
24
25

1 8. That Defendants, as well as each of their agents, and all persons acting in concert
2 with any of them, be immediately restrained from, directly or indirectly, accessing any computer
3 folders or files provided to Defendants by Ken Cannata or Bobbie Cannata;

4 9. That Defendants, as well as each of their agents, and all persons acting in concert
5 with any of them, be ordered to provide HPT with any and all communications, documents and
6 information received from Ken Cannata or Bobbie Cannata;

7 10. That Defendants, as well as each of their agents, and all persons acting in concert
8 with any of them, be immediately restrained from, directly or indirectly, engaging in any
9 activities related to the planning, design, development, coding or creation of any software or
10 products that in any way uses, relies upon, is based on or discloses any of HPT's confidential,
11 proprietary or trade secret information, including but not limited to source code;

12 11. That Defendants be required to submit any and all computers and portable USB
13 storage devices and drives used by them at any time since January 1, 2016 for forensic
14 examination by an expert designated by Plaintiff and shall be restrained and enjoined from
15 changing, deleting, modifying or otherwise tampering with any contents on any such computer
16 or portable USB storage device or drive;

17 12. That Defendants be required to tender the contents of any and all computer files
18 and folders which are reflected on the screenshot images attached as Exhibits 1-A, 1-B and 1-C
19 to the Declaration of Keith Prociuk;

20 13. That Defendants be required to tender the PCM Harness for the E38 Controller
21 depicted in Exhibit 1-I to the Declaration of Keith Prociuk for forensic examination by an expert
22 designated by Plaintiff and shall be restrained from changing, deleting, modifying or otherwise
23 tampering with the PCM Harness for the E38 Controlled in any manner whatsoever;

1 14. That Defendants be ordered to compel with discovery and produce the documents
2 and information requested by HPT; and

3 15. That this Court enter modify the Scheduling Order and Trial Date in this matter in
4 order for HPT to conduct proper discovery relating to these matters;

5 16. That the Court issue an order to show cause as to why the requested preliminary
6 injunction should not issue; and

7 17. For such other and further relief as this Court deems necessary and appropriate.
8

9 Dated this 16th day of August, 2018

10 Respectfully submitted,

11 s/ Andrew P. Bleiman
12 Attorneys for HP Tuners, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2018, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all Counsel of Record.

HEURLIN, POTTER, JAHN, LEATHAM,
HOLTMANN & STOKER, P.S.

s/ Stephen G. Leatham

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